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THE REFORM

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English Land System.

BY THE

HON. GEORGE C. BRODRICK,

Warden of Merton;

AUTHOR OF "ENGLISH LAND AND ENGLISH LANDLORDS."

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PREFACE.

THE following Essay is, in the main, a popular abridgment of those chapters in my own treatise, entitled "English Land and English Landlords," which deal with the reforms to be effected in the English system of Land Tenure and Land Tenancy. One of these reforms has been partially carried out by Lord Cairns' Settled Estates Act, but reasons are here given for regarding that Act, however beneficial, as no more than a tentative adjustment of a question which must needs be ultimately settled on broader principles. In the discussion of Tenant Right, liberal quotations have been made from an article contributed by me to *Fraser's Magazine* of February, 1882.

GEORGE C. BRODRICK.

THE REFORM OF THE ENGLISH LAND SYSTEM.

In discussing the Reform of the English Land System, we have to consider how far it may be expedient to modify that System, either in the special interest of agriculture, or in the general interest of social and political well-being. But we cannot hope to form a just conception of the English Land System as it ought to be, without having a practical knowledge of the English Land System as it is—that is, of those distinctive and typical features which characterise it among the Land Systems of the world. Such a study is especially interesting at the present moment, when the Irish Land System has just been subjected to radical changes, and when the English Land System itself has been placed on its trial, not only by the progress of democratic ideas, but also by the inevitable effect of agricultural depression, the severest and the most prolonged which has occurred within living memory.

The Land System of England has a common origin with that of Ireland and of other European countries. Modern researches have shown that in most parts of Europe, if not of Asia, the earliest form of agrarian constitution was a tribal settlement or village community, representing a clan or group of kindred families. It is needless here to dwell upon the peculiar and minute rules which governed the division and cultivation of land in this simple model of primitive society. What is important to note is that it left no room for that three-fold division of burdens and profits between landlords, tenant-farmers, and farm labourers, which is the special mark

of the English rural economy. Every freeman was, in theory, his own landlord, his own farmer, and his own labourer; and, except serfs or slaves, there were very few persons who did not form members of the landed democracy, as it might be properly called. But the landowners of that day were not peasant proprietors; for though each was entitled to a lot of his own, he could not be sure of holding the same piece of ground two years together; and there were few, if any, separate enclosures for cattle. By slow degrees, however, the principle of individual ownership asserted itself. The chief or strongest member of a clan would obtain larger allotments than others, and would at last get them severed from the common fields; at the same time, he would claim the lion's share of the waste, and at last come to treat it as his own property, only subject to rights of pasturage and turf-cutting. Meanwhile, other causes were at work to undermine the landed democracy, and transform it into a landed aristocracy, under which the village community became the manor, the greater freeholders became tenants, and the lesser freeholders sunk into the class of villeins or mere labourers. We must not stop to investigate the steps by which this remarkable transition was effected. Suffice it to say that it seems to have been almost completely effected in most parts of England before the Norman Conquest.

During the Middle Ages, the Land System of England was profoundly modified by the introduction of feudal tenures. Not that feudal tenures, with all their well-known incidents, were substituted all at once for the old national customs by a single act of the sovereign power. More than a century elapsed before feudalism was fully established, and even then it was subject to important exceptions in Kent and elsewhere. Still, the feudal system is the real basis of the English Land Laws, as they exist at this moment. That system, it is true, ceased to govern the whole structure of society after the Reformation, but it continued to regulate the land-tenures of most European countries until after the French Revolution. In England it was otherwise. "Feudal tenures," in the strict legal sense, were abolished here in the reign of Charles II., but, perhaps for that very reason, the

principles and rules of feudal law escaped revision here, when they were swept away elsewhere, and have left an indelible stamp on the distinctive features of the English Land System.

I. These features are five in number:—(1) The law and custom of Primogeniture, governing the descent and ownership of land. (2) The peculiar nature of family settlements, which convert the nominal owner of land into a tenant for life, with very limited power over the estate. (3) The consequent distribution of landed property among a comparatively small and constantly decreasing number of families. (4) The direction of cultivation by a class of tenant-farmers, usually holding from year to year without the security of a lease; and (5) The dependent condition of the agricultural labourers, who are mostly hired by the day or the week, and have seldom any interest in the soil. It is the combination of these features which makes the rural economy of England so entirely unique, unlike that of any other European country, and still more unlike that of the United States or our own colonies. They are often represented as the spontaneous growth of our national character and history, coupled with the peculiarities of our soil and climate. But history itself shows that such is not the fact—that, in reality, they are mainly the result of artificial causes, and that it is quite within the province and the power of law to remodel—of course gradually—the present Land System of England.

1. Let us first glance at the institution of Primogeniture. The right of the eldest son to inherit all the land in case of intestacy was not recognised by Roman Law, or by any of the primitive codes known to us, such as those of the ancient Hindoos, the ancient Germans, the Irish, or the Anglo-Saxons. The Saxon rule of descent, as is well known, was that of Gavelkind or equal division, and it was only superseded by the Norman rule of Primogeniture about the year 1200. Moreover, it was only for military reasons that William the Conqueror's successors adopted the strict and absolute law of Primogeniture, which has now been firmly established in England for nearly seven centuries. A careful study of

the subject leads to the conclusion that it is this law of Primogeniture which has produced and kept alive the custom, and that it is not the custom which has perpetuated the law. Before the law was introduced in England, there is no reason to believe that any general custom of Primogeniture existed in English families. After the law was swept away in America, an equal partition of land became the almost universal custom, although American testators enjoy almost the same liberty of making wills that is allowed in England. Moreover, in the case of personal property, where the law is different in England, the custom is also different, and hardly anyone thinks of accumulating all his personalty on one son. Nor must we suppose that because the law seldom operates directly, it has not a very wide and powerful operation indirectly. When a man makes a will or settlement, he knows very well, or (if he does not) his solicitor tells him, that all his land would naturally go by law to his eldest son, and this knowledge, transmitted from one generation to another for seven hundred years, creates a sentiment or prejudice in favour of Primogeniture which nothing but a reversal of the law will effectually counteract. No doubt, there is much to be said for, as well as against, Primogeniture; but for our present purpose the important fact is that Primogeniture, founded on law, and consecrated by custom, is the chief corner-stone of the English Land System.

2. But the custom of Primogeniture is far more stringent than the law. When land descends to an eldest son, on intestacy, it belongs to him absolutely, and he is free to deal with it as he pleases. On the other hand, when it comes to him under a will or settlement, it usually comes to him for life only; and until Lord Cairns' Settled Estates Act was passed last year, it must afterwards have gone to his eldest son, whether he pleased or not. This was the consequence of certain legal refinements devised in the seventeenth century, whereby it became possible for a grandfather to ordain beforehand that his eldest grandson, as yet unborn, and who might turn out the most worthless or the most exemplary of mankind, should inherit a particular estate, making his son

only a life tenant or "limited owner." Under the older entails of the Middle Ages this was impossible, and though similar powers of tying up land were acquired by the landed aristocracy in the fourteenth and fifteenth centuries, means were found to defeat them; so that, in the sixteenth and first half of the seventeenth centuries, the ownership of land was far more free than it was until last year. For the great mass of English land is under settlements of the stricter kind, and land tied up by settlements of this kind is land which has not, and perhaps never may have, a real owner. The economical evils of such a system are so obvious that no one would venture to defend it, but that it is supposed to keep old family properties from being broken up. But then the question arises whether this is altogether an advantage. The character of the English gentry and aristocracy was formed before limited ownership was known, and when estates descended from father to son either in fee simple or under the old rule of entail, which allowed of their being instantly converted into fee simple estates. In those days, family properties were placed under the guardianship, not of conveyancers, but of the families themselves, and the nation was content that if they came into the possession of degenerate heirs, they should be sold and purchased by worthier competitors. Even in these days, such cases have occurred, where a family property has been ruined by one or two spendthrift limited owners in succession. Experience amply shows that, in such cases, it generally changes hands for the better, notwithstanding the loss of ancestral connection. The new purchaser may be comparatively ignorant of country life, but he is not encumbered by rent-charges of indefinite duration, by mortgages contracted to pay off his father's debts, by dynastic traditions of estate-management, by the silly family pride which must needs emulate the state of some richer predecessor, by the passion for political dictation to which the refusal of leases is so frequently due, or by the supposed necessity of satisfying the supposed expectations of the neighbourhood. He can provide for his widow and younger children by selling off portions of the property, if he pleases,

instead of charging the estate, and in the meantime he can develope the resources of the property, without feeling that he is either compromising or unjustly enriching an eldest son. These advantages make themselves felt, even when the new purchaser is surrounded with great settled estates and influenced by the example of their possessors. But they might be expected to make themselves far more conspicuously felt, if all landowners enjoyed the same freedom of disposition.

Accordingly many attempts were made by Parliament to reconcile limited ownership with the interests of the public. At last, Earl Cairns—a Conservative in politics, but a true law-reformer—has succeeded in carrying a measure which is at least thorough-going from his own point of view. It gives the life-tenant, or limited owner, most ample power of improving or selling the family estates, except the mansion-house and park, so long as the purchase-money is invested for the benefit of the very same persons who, under the settlements, would have been entitled to inherit the land. Henceforth, therefore, settled estates will be almost as saleable as unsettled estates, *in point of law*, and it will no longer be necessary, in most cases, to obtain the consent of other parties interested, or the Court of Chancery. How far this measure will encourage Free Trade in Land, and what influence it may have on the institution of Primogeniture, are entirely different questions, which remain to be considered hereafter.

3. The inevitable tendency of a Land System thus founded on Primogeniture, and hitherto effectually guarded by family settlements, is to prevent the dispersion of land, and to promote its concentration in a few hands. Settled estates seldom come into the market, but there is nothing to prevent a rich life-tenant from increasing the size of his property, and this is constantly happening. A very large number of farmhouses in England are really ancient manor-houses, formerly the residences of squires and yeomen, whose little freeholds have been gradually absorbed into the princely territories of the landed aristocracy, and whose descendants are settled in the neighbouring towns. Of course, we must

not forget the opposite movement or counter-emigration of retired tradespeople into the country. But they seldom take root there; they do not look upon their villas as homes; they count for nothing in a county, and their children are usually reabsorbed into the town population.

Upon the whole, it may be stated with certainty that the number of agricultural landowners in England was never so small, as the population was never so large, as it now is. It would appear from Domesday Book that in the reign of William the Conqueror the soil of England was divided among about 170,000 landowners, including more than 100,000 villeins, as well as above 50,000 freeholders. There is no direct mode of estimating the number of landowners between that age and our own; but there is a vast body of indirect evidence pointing to the conclusion that in the reign of Elizabeth, for instance, petty squires, yeomen, and small freeholders occupied a much larger space in the rural community than they do at present. Even since the compilation of the "New Domesday Book" in 1876, there is great difficulty in ascertaining the exact actual number of English landowners; but, after making due allowance for double entries and other sources of error, we may obtain an approximate result. It seems clear that, excluding the holders of less than one acre, there are now about 150,000 landowners in England and Wales, while about 2,250 persons own together nearly half the enclosed land in England and Wales. Considering that England and Wales now contain a population of more than 20,000,000, and did not contain above 2,000,000 in the reign of William the Conqueror, the proportion of landowners to population is now less than one-tenth of what it then was, and, what is still more striking, nearly half of all the land belongs to a mere fraction—about $1\frac{1}{2}$ per cent.—of all the existing landowners, even excluding those below one acre.

It would be superfluous to point out the political danger involved in this distribution of landed property, which contrasts most strongly with that which exists in foreign countries. For instance, in France, before the loss of Alsace and Lorraine, there were, according to M. Lavergne, about

5,000,000 proprietors owning about $7\frac{1}{2}$ acres each, on the average; about 500,000 proprietors owning 75 acres each, on the average; and about 50,000 proprietors owning 750 acres each, on the average. In Wurtemberg there are some 280,000 peasant owners with less than five acres each, and about 160,000 proprietors of estates above five acres. No doubt, this extreme subdivision is, to a great extent, the result of the Code Napoléon, under which, at the death of a proprietor, all his land is divided equally among his children, except one child's portion, which is left at his own disposal. On the other hand, the extreme aggregation of land in England is no less the result, and the foreseen result, of Primogeniture and Settlement. It is not merely that, under the law of Primogeniture, a great estate which may have been formed out of many small estates goes to one child, instead of being subdivided among several; nor is it only that settlements, in effect, prevent family estates from being diminished, while they do not prevent them from being increased. It is also that Primogeniture and family-settlements have created a landed aristocracy under the cold shadow of which a true yeomanry, like the old English, cannot flourish. It is too much to say that the old yeomen have been *crushed out* by powerful neighbours. Many have sold their patrimonies because they were in debt, or because they found that by getting a fancy-price from some great nobleman or millionaire they could improve their incomes and the expectations of their families. But it is still more delusive to regard the disappearance of the old English yeomanry as the result of natural causes beyond the control of law. When it is said that land in this country has now become the luxury of the rich, and that a poor man would be very foolish to retain a few hundred acres when he could make a profit by selling them, it is forgotten that in Northern France, Belgium, Holland, and elsewhere, land fetches a higher price than in England, but that small proprietors do *not* die out; on the contrary, they are the highest bidders in the land market. We must therefore look beyond the fancy price of land for an explanation of the fact that in England the body of landowners is getting

smaller and smaller. The explanation is not far to seek. The vast preponderance of great landowners has left the yeoman class no place in county government or county society. As one yeoman vanishes after another, those who survive, feeling themselves more and more isolated, and missing the neighbourly fellowship of past generations, have been drawn insensibly into country towns, until at last the rural population of English counties may be said to consist of three elements, and three only—landlords, tenant-farmers, and labourers.

4. This leads us to consider the fourth distinctive feature of the English Land System—the direction of cultivation by a class of tenant-farmers usually holding from year to year, without the security of a lease or statutable tenant-right. For the great bulk of the land in these islands, as is well known, is cultivated, not by the owners, but by this intermediate class, numbering between 500,000 and 600,000 farmers in Great Britain, who hold on the average 56 acres each. It is not thus in other countries, especially in the most civilised. There, on the contrary, the great bulk of the land is cultivated by the owners themselves, most of whom may be classed with our agricultural labourers rather than with our tenant-farmers, but form a real peasantry of a class well-nigh extinct in England. For it was not always thus in England itself. Lord Macaulay believes the small freeholders, whom he estimated at 160,000, to have greatly out-numbered the tenant-farmers in the reign of Charles II., and there is good reason to believe that English farms were commonly held under lease until the period of the French war at the end of last century. The history of yearly tenancy is difficult to trace, but it is certain that it was very much encouraged by the long continuance of "war-prices," which made landlords very unwilling to part with the immediate control of their properties, and by their desire to maintain political influence over their tenants. The late agricultural depression has operated in the same direction, inclining landlords to keep farms at their disposal until rents improve, and inclining tenants to rely on the forbearance of landlords under yearly tenancy, rather

than "hang a lease round their necks," as they say. On the other hand, the want of security incident to a mere yearly tenancy, and especially the want of security for a farmer's improvements, has been very much felt and discussed of late. Unhappily, it has not led to a revival of leases, but to attempts to bolster up the unstable system of yearly tenancy. One of these attempts was embodied in the Agricultural Holdings Act of 1875. Such measures may be described as tending to establish a national system of tenant-right, and this would certainly be a great advance on mere yearly tenancy, but it would be a very poor substitute for leases, and no substitute at all for ownership.

5. We now come to the fifth distinctive feature of the English Land System—the dependent condition of the agricultural labourer. During the Middle Ages, English labourers, whether freemen or serfs, had always been essentially peasants—that is, occupiers of land which they cultivated in spare hours for their own benefit, and from which they could not be displaced so long as they rendered customary services or paid their rent. With the growth of the commercial spirit, the suppression of monasteries, the general rise of prices, and the progress of enclosure, a new era set in, and the Poor Law of Elizabeth finally transformed the old English peasant into the modern English agricultural labourer, who lives on weekly wages, never owns land, and seldom holds any beyond a small garden or allotment, looking upon the workhouse as his natural refuge in old age. Probably he is better housed and clothed than his mediæval ancestor, though it is doubtful whether he is better fed, if we take into account the exorbitant price of meat in these days. But he is certainly less independent, and, notwithstanding the spread of education, he must still be ranked below a great part of the Continental peasantry—not to speak of American farmers—in the scale of civilisation.

We have now passed in review, however briefly, the distinctive and typical features of the English Land System, as it is. In considering what it ought to be, let us firmly grasp the principle, that no reforms of it are likely to be permanent or beneficial which are not in harmony with

the organic and apparently indestructible elements of our national character. The new Rural Economy of England must, above all, be essentially and thoroughly English. It cannot be modelled on that of France, or Germany, or Russia, or Switzerland, or Italy, or Belgium, or the United States. On the other hand, we must beware—once more—of imagining that all the distinctive features of the English Land System must need be the spontaneous growth of the national character and history. We know, on the contrary, that in Saxon times the agrarian constitution of England was essentially democratic; that in Norman times ecclesiastics rather than barons were the pioneers of agricultural improvement, and the models of territorial benevolence; that in the England of Elizabeth, and for two centuries after the Reformation, the lesser gentry and yeomanry were the bone and sinew of the landed interest; that the dependent condition of English labourers dates from the Poor Law, and that of English farmers from a far more recent period; that, in fact, the English Land System is not an indigenous product of the soil, but an artificial creation of feudal lawyers, matured by their successors in the evil days after the Restoration, largely modified by such temporary causes as the high prices current during the Great War, and afterwards strengthened by a constant flow of population towards great towns, partly consequent on the operation of the Land System itself.

II.—1. The first reform to be effected is one upon which there has so long ceased to be any rational controversy that it ought to have been adopted long ago. The law of succession to land on intestacy should at once be placed on the same footing as the law of succession to other kinds of property; so that, if a man should die without a will, his landed estates would ultimately be divided equally among all his children, as they would have been in Saxon times. Many people believe, or profess to believe, that such a change in the law would make little difference in practice, since landowners would then take good care not to die without a will, and would always make one in favour of the eldest son. There is no ground for this opinion; on the

contrary, the presumption is that, for reasons already stated, an abolition of the law of Primogeniture would go far directly, and still farther indirectly, to undermine the custom of Primogeniture. We all know how great is the influence of solicitors over all our legal acts, and it is tolerably certain that in the long run the influence of solicitors will be in conformity with the course of succession which the law may sanction. As it is, a man informs his solicitor that he knows little of legal phrases, but that he wishes to leave his property in the usual and right manner; upon which the solicitor draws a will, giving all the land to his eldest son, in accordance with the law of Primogeniture, but dividing the personalty, if any, among his widow and children, nearly in accordance with the Statute of Distributions. So close is the correspondence of the custom with the law that, whereas in default of sons the law vests the land in all the daughters, and not in the eldest daughter only, the same rule is adopted, with very slight variations, in most wills and settlements of realty. Were the law altered, however, and especially were it altered after a thorough discussion of the whole question, the uniformity of these usages would be effectually broken. Instead of telling his client that by the common law his eldest son is the one sole heir of all his land, the solicitor would remind him that, in default of a will, the law would divide it among his widow and children. The consequence would assuredly be that many testators would direct their estates to be sold and the proceeds to be distributed in the same way as their stocks or shares or other personalty. Here and there an old property would be allowed to devolve to several children under the new law of intestacy, and yet would be kept in the family by means of such fraternal arrangements as are made every day on the Continent. The change of sentiment would operate gradually, and perhaps it is well that it should operate gradually; but each example of equal division would help to dispel the prejudice which alone disguises the injustice and impolicy of Primogeniture.

2. The question of restricting the power of settlement is far more difficult and complicated. Every one knows that in the upper and middle classes it is the common practice to

make settlements of money on marriage, protecting the wife against the improvidence of the husband, and the children, yet unborn, against the risk of their being left penniless by their parents. To prohibit marriage settlements of money would be a somewhat violent interference with English habits, and yet it seems unreasonable to allow marriage settlements of money, but to prohibit marriage settlements of land. Now it is not unworthy of notice that, in the United States, even ante-nuptial settlements of personalty are not considered absolutely necessary for the protection of families, and it is usual for parents to give their married children an allowance during their own lives, making a further provision for them by will. It is by no means self-evident that society would suffer in this country if a similar practice were to prevail, and if English marriage settlements were henceforth to assume a much simpler form. There are very strong reasons for restricting complicated reservations of future interests even in personalty, and for doubting whether the efforts of the dead to regulate the enjoyment of wealth by the living for the sake of the unborn are sufficiently repressed by the rule against perpetuities and the Thelusson Act. Still, it is important to realise that life estates in land rest on the same principle as trusts for the preservation of settled funds during the lifetime of husband and wife in settlements of personalty. And, for the present, it must be assumed that public opinion is not prepared to suppress a custom so wide-spread as that of settling personalty for the benefit of a second generation. Upon this assumption, we cannot decline to grapple with the broad question whether a valid distinction can be drawn between realty and personalty as regards the power of settlement, or whether every rule laid down for the one must needs be applied to the other.

This question cannot be effectually evaded by multiplying proofs of the partiality formerly shown to land by a Legislature principally of landowners, nor could that now be redressed by showing an equally irrational partiality to personalty. The policy of prohibiting life-estates in land, without prohibiting the corresponding life-interests in

personalty, must stand or fall by the peculiar nature, claims, and obligations, of Real Property. Not a Session elapses in which Parliament does not affirm the principle that land is a thing *sui generis*, over which the State may and ought to assume a control far more stringent than it would be politic to assume, but not than it might rightfully assume, over other kinds of property. Whether it be for the construction of railways, canals, and waterworks, for the requirements of public health, or for any other legitimate purpose of local improvement, the Legislature freely confiscates land, though it usually gives its owners an exorbitant compensation. The familiar arguments in support of this interference are derived from the fact that land is strictly limited in quality—at least within the borders of each kingdom—and that its resources in a virgin state are not the production of human industry. These arguments are so far valid as to rebut what does not need to be rebutted—the presumption of any binding analogy between land and money. If an additional argument were needed, it might be found in the consideration that landed property is a specific and concrete thing, carrying with it manifold privileges and duties, whereas personalty, for the most part, consists in an abstract right to receive dividends, which may belong to one man as well as to another. It may be an evil, in itself, that a perfectly worthless person should have a large fortune settled upon him by an ancestor quite ignorant of his future character; but this evil is far less, both in kind and degree, if the fortune consists of money, than if it consists of land. In short, the one decisive justification for treating land as an entirely exceptional subject of property is to be found in the entirely exceptional power which the possession of it confers. If we contemplate the supreme influence wielded by landowners collectively over the condition, and especially over the dwellings, of the people; if we remember that upon their estate-management depend the productiveness of the soil and the internal food supplies of the country; if we realise that not only is the land in physical sense "the leaf we feed on," but in a political sense the substratum of our whole administrative machinery; we shall not fail to per-

ceive the full absurdity of postulating that it should be exactly assimilated to stock in plasticity for the purposes of settlement—but not, forsooth, in facility of transfer, in the course of devolution on intestacy, or in liability to probate and succession duties.

The abolition of life estates in land is, therefore, perfectly consistent with the maintenance or toleration of life-interests in personalty, if public opinion is not yet ripe for a radical alteration in the form of ordinary marriage settlements. It is also perfectly consistent with the practice of vesting a family property, whole and undivided, in the eldest son, and charging for the benefit of a widow or younger children. It would even be consistent with the practice of directing a family property to be sold, and settling the proceeds as personalty, yet allowing the sale to be postponed, so long as all the parties interested should be willing to accept interest out of the undivided property, in lieu of capital sums out of the proceeds.

Nothing short of prohibiting "limited ownership," in the sense of life-tenancy followed by estates-tail, will fully effect the object of establishing Free Trade in Land. The more thoroughly we appreciate the almost insuperable difficulty of partially reforming an institution so deeply rooted and widely ramified as the custom of entail and settlement, the more irresistible will appear the conclusion that it is better to reform it altogether, by abolishing limited ownership and all kinds of ownership in regard to land, except ownership in fee simple. If this were done, it would be possible to give land, or to sell it, or to leave it by will, but not to settle it—that is, to give A. B. and C. successive life interests in it, each taking it for life on the death of his predecessor, reserving the complete ownership of it for D. E. or F., who may not be in existence now, who may never be in existence, and who, if born at all, may be utterly unfit to inherit landed property. The practical effect of this reform would be to make fathers, instead of grandfathers, law-givers in their own families and trustees of the family estates. Each head of a family, in each generation, would decide whether the estates should be

divided or left entire to one son. Probably for many years to come most heads of families would continue to "make an eldest son," as it is called, but they would probably not think it just to give him a fortune twenty or thirty times as large as that of his brothers or sisters. It would therefore constantly happen that either the whole, or some outlying parts, of the estates would be sold off to raise portions, and so Free Trade in Land and social equality would be promoted at the same time. So, as to marriage settlements. A father could not then settle land upon his unborn grandson, making his son life-tenant only; but he might either give it out and out to his son, or charge it with an annuity, or direct it to be sold, and settle the proceeds, as he pleased, within the limits of the present law applicable to personalty.

Let us now assume that, due provision being made for vested interests, all the ingenious network of "particular estates," as they are technically called, were swept away by law, and that every acre of English soil belonged absolutely to one assignable owner. Let us, further, picture to ourselves a case in which the operation of the change would be most severely tested—the case of an heir succeeding to a family property strictly entailed by its original purchaser, and held together for centuries by settlements in the eldest male line, but finding himself at perfect liberty to sell it or devise it as he pleases. This is a case, be it remarked, which, but for the practice of re-settlement, would occur daily under the present system, and does occur sometimes, when the eldest son obstinately refuses to commute his estate-tail for a life-estate. It will hardly be disputed that a landowner so circumstanced has a more enviable lot, with greater inducements and greater power to do his estate and all connected with it full justice, than if he were the mere creature of a settlement, but it may be imagined that his gain is more than counterbalanced by some loss elsewhere. Where, then, is this loss? and who is it that suffers by the substitution of ownership for life-tenancy in the case supposed? Not, surely, his ancestors, who, having brought nothing into the world, could not carry anything out, and

whose memory it would be superstitious to personify. Not his wife, or younger children, whom he is now enabled to endow according to his own convictions of justice, instead of according to a standard determined by the paramount claims of Primogeniture, before his marriage, if not before his birth. Not his eldest son, who by the hypothesis must have come into the world, or at least emerged from childhood, after the alteration of the law, and would have been educated in the full knowledge that his birth-right, if any, was at the disposal of his father. Not any more distant relatives, whose interest in family estates, unless vested, is usually most shadowy and delusive. Not unborn descendants, who might possibly inherit if the entail were perpetually renewed, under the present law, but who are equally with the dead beyond the reach of appreciable injury. In short, we strive in vain to discover any specific individual, either in *esse* or in *posse*, who could be aggrieved by the legal extinction of life-estates and estates-tail, under proper conditions of time.

It may be said that under Lord Cairns' Act settlements have already ceased to cripple limited owners, since they are enabled to improve, or even to sell, estates thus settled almost as freely as if there were no settlement at all. I reply that limited owners are still crippled, though artificial limbs have been provided to aid them in moving. The dead hand still controls the acts of the living in the interest of the unborn, though it is no longer allowed to injure the whole community by keeping land forcibly out of the market. The limited owner—that is, the living head of the family—may now sell the family estate, with the exception of the mansion-house and park, and it is to be feared that he will often do so, for the selfish purpose of increasing his own income, and of relieving himself at the same time of all the family claims and territorial responsibilities which are supposed to devolve on the head of a territorial family. But he will seldom have a more legitimate motive for doing so, inasmuch as the proceeds will be tied up as before for the benefit of his eldest son, and he will have no power to make an equitable partition of them among his other children. In other words, the old exclusive principle of Entails is perpetuated, while the only

tolerable excuse for Entails—the preservation of family properties—is finally cut away.

For these and other reasons, Lord Cairns' Settled Land Act cannot be accepted as more than a most valuable instalment of the reform needed in this part of the English Land System. When the English people see heads of territorial families letting their family places at a handsome rent, selling the rest of their family estates for tens or hundreds of thousands of pounds, and spending the interest in London or at foreign watering places, regardless of every duty attaching to landed property, they will begin to ask themselves whether it is worth while to keep up the fiction of maintaining settlements of land, which mean nothing more than settlements of what the land will fetch in the market for the pecuniary advantage of the eldest son alone. This makeshift legislation cannot be a final solution of the question. We must be prepared to go ultimately as far as the prohibition of all settlements affecting land, and for the present to insist on giving every life-tenant a power to dispose of the family estate for the benefit, not of one only, but of all the children.

But though sound policy requires us to go thus far, it does not require us to go farther. It does not require us to adopt the French system of compulsory partition which puts the State in the place of the parent, and makes it impossible for a father to disinherit the most worthless of children. This system may or may not have been necessary to break down the spirit of feudalism which had been carried, in France and elsewhere, to extremes which modern Englishmen would never have tolerated. But it has never been thought necessary in America, and the progress of democracy renders it less and less necessary in England. The sentiment of equality is gaining strength in this country every day, and will surely make itself felt in wills, as soon as the power of settling land is effectually paralysed. Again, common-sense itself forbids us to adopt Mr. John Stuart Mill's proposal that no one should be allowed to inherit more than what he calls "a comfortable independence." A very little reflection will satisfy us that it would be wholly

impossible to carry out this proposal, and that, were it possible, society would not in the long run be the gainer. Nor shall we be easily induced to adopt Mr. Henry George's plan for "nationalising" land, by making the State the sole landlord, and reducing the so-called landowners to the position of lease-holders or tenants. The State, after all, is not a Supreme or even a Superior being; it is merely a convenient expression for Ministers, Parliamentary representatives, and officials, of like passions with ourselves—quite as fallible, more open to motives of jobbery, and far less competent to manage landed property than individual owners personally looking after their own affairs on the spot. Let it be fully admitted that land requires more State control than any other kind of property, because of the power which naturally belongs to it; yet there is no reason to believe that anyone would be the better if it all passed into the hands of the State. It has never been shown that State-domains were more vigorously developed, or more wisely managed, than private estates; and there is more to be said for all the railways than for all the farms of Great Britain being taken over by a Government department. It is needless to repudiate the notion that landowners can be deprived of their property, without compensation, for the benefit of other classes. This is not statesmanship; much less is it political economy or justice; it is simply what our fathers would have described in homely phrase as a plan for "robbing Peter to pay Paul."

3. It follows that we cannot wisely advocate any scheme for artificially increasing the number of landed proprietors. Remove the artificial restrictions which have created something like a monopoly of land, and the number of proprietors will assuredly increase itself with sufficient rapidity. Reverse the law of Primogeniture, and some properties will be split up every year on intestacy, while many others will be split up by the wills of testators acting under new influences. Prohibit life-tenancy and entails, and portions of estates will constantly be sold off to equalise the fortunes of children. Simplify land transfer, and the monstrous expenses and delays of conveyancing will cease to impede

small purchases of land. As fragments of old estates are thus bought up by a new class of landowners largely composed of retired tradespeople and men of business, a new order of county society will grow up in country districts, and a landed democracy will gradually establish itself side by side with the landed aristocracy. For we must remember that each new purchaser of a small property settling in a village or the adjoining market-town helps to increase the attractions of the district for other would-be purchasers of the same class. With a few congenial neighbours to keep company with them, they no longer feel withered by the cold shade of the great mansion, and learn that proprietorship is a luxury for the many and not only for the few.

4. Such reforms as we have been discussing may enable many prosperous farmers to become their own landlords, but the great mass of farmers will probably continue to be tenants, and it remains to consider whether any legitimate reform of the English Land System can improve their position. Now, it must at once be conceded that the principles of the Irish Land Act cannot, either in justice or in policy, be extended to Great Britain. That Act, if it can be defended at all, must be defended by historical, political, sentimental, or economical reasons which have no application to England or Scotland. The British farmer is essentially the creature of contract; no one compelled him to enter upon his farm, and no one can lawfully alter the terms of his agreement without his landlord's consent, any more than his rent can lawfully be increased without his own consent. There never was a time when those who may wish to hire land could procure it on easier terms. Indeed, so far as we can foresee, British farmers rather than landlords are likely in future to be masters of the land market. If there be a class of British tenants which needs legislative protection against the extortion of landlords, it is assuredly not the class of agricultural tenants, but that of small householders and lodgers in great towns. A few owners of house property in the artisans' quarter of a manufacturing centre may possess a monopoly infinitely more oppressive than the so-called monopoly of agricultural landlords, and the cottage tenants

of agricultural landlords are far more defenceless than the farm tenants. It is not surprising that a Householders' Fair Rent Alliance has already been formed against ground-landlords, and it ought in reason to be followed by the formation of a Lodgers' Fair Rent Alliance against householders.

It is an entirely different question whether a statutable tenant-right, in the sense of a right to compensation for the unexhausted value of improvements, is not defensible on grounds of economical policy. It is quite possible to conceive that, under a land system so highly artificial as that of England, inveterate customs may have grown up, inconsistent with the real interests of landlords as well as tenants, and only to be counteracted by the superior force of law. Society cannot always afford to wait until economical principles have vindicated themselves, perhaps at a ruinous cost to consumers, in the course of generations. From this point of view, there are very strong, if not conclusive, arguments in favour of giving tenants an indefeasible right of compensation for improvements of a certain kind, and giving landlords a summary remedy, in lieu of distress, against certain defaults on the part of tenants. The precedents for such an interference with contract are too numerous to be cited; it is enough to point out that if agreements "in restraint of trade" may properly be invalidated, so also may agreements "in restraint of agriculture." But it does not follow that an indefeasible right of compensation should be extended to "anything done by the tenant whereby the letting value of the holding is increased." So long as the agricultural system of Great Britain is one of tenancy, it is by no means expedient to encourage the tenant in undertaking permanent improvements which ought to be executed, if at all, by the landlord. Tenants have rarely more than enough capital for the proper cultivation of their farms. If they should enter upon large building, drainage, or reclamation works, they would usually do it on borrowed money, and could not be expected to do it with due regard to the general benefit of the estate. "The value of the holding" might be increased, but the landlord might have good

reasons for subdividing the holding or consolidating it with another, in which case the so-called improvement might be actually detrimental. It is only in respect of agricultural tenancies that so unreasonable a pretension would be entertained for a moment. If a house and garden were let by the year in the suburbs of a town, no one would dream of claiming for the tenant a right to erect villas in the garden at his own pleasure, and to receive compensation if the letting value of the holding were increased thereby. Such a claim is, in fact, inconsistent with full proprietorship, and full proprietorship must always be recognised as the highest ideal of land tenure.

On the other hand, no landlord could suffer any injury, while a new spirit might be infused into British agriculture, if an indefeasible right of compensation were secured to every tenant for outlay essential to good husbandry, under the conditions of modern farming. Whether or not the various forms of such outlay are adequately enumerated under the third-class improvements of the Agricultural Holdings Act does not affect the fundamental principle. That principle is, that where it is of paramount importance to establish a general sense of security, and where free contract has failed to do so, the State may legitimately effect it by Act of Parliament, for the benefit of all parties concerned; since the sense of security may actually add a new value to land without robbing anyone. To this extent, and to this extent only, the interests of consumers, so freely invoked in the support of tenant-right, are really concerned in its recognition. Nor would it be difficult to devise a mode of limiting indefeasible tenant-right. The simplest plan would be to frame clauses, defining ordinary acts of good husbandry, giving an out-going tenant an absolute right to compensation for their unexhausted value, and creating a machinery whereby that right should be enforced. But a gentler, and perhaps more effective, method of securing the same end would be to make the compulsory enactments operative only where the parties should have failed to embody their agreement in a lease of a certain duration. Had the well-known principle of the leases granted by the Earl of

Leicester been generally adopted throughout England, it is probable that no wide-spread demand for indefeasible tenant-right would have arisen. It is equally probable that if indefeasible tenant-right were established by law, in default of a lease, the practice of granting leases would again become a national custom, as it was in the last century.

5. It is more doubtful whether much can be done by the Legislature, at least directly, to raise the condition of the agricultural labourer, unless it be in the direction of encouraging the subdivision of parish lands into plots suitable for labourers' allotments. It is gratifying, however, to realise that his condition is already being raised indirectly by the concurrent effect of legislation and natural causes. Popular education, mainly provided at the expense of others, has quickened his intelligence and his sense of independence. Increased facilities of emigration, of migration, and of combination, have enabled him to exact higher wages for work which is not always so efficient as that of his father. Machinery has materially lightened his daily toil; Free Trade and co-operation have reduced the cost of most necessaries; and if the price of meat is higher than it was some thirty years ago, this is mainly because so many more labourers can now afford to buy it. No doubt, it would be a happy day for the country if the best and most skilful of our agricultural labourers could be converted into peasant proprietors, but it would not be enough to endow them with small properties. We must also endow them with the virtues and the habits which can alone make such proprietorship successful, and these virtues and habits are the growth of many generations. In the meantime, the inevitable tendency of liberal reforms in land-tenure and land-tenancy would be to bring land within reach of agricultural labourers. As properties became smaller on the average, farms would become smaller on the average, and as farms became smaller on the average, the separation between the farmer and the labourer would become less and less. It would be still further narrowed if the agricultural labourer shared the Parliamentary franchise with his employer, and

would dwindle indefinitely if, under a thoroughly popular system of local government, every householder, whether farmer or labourer, had a voice in the management, not only of parish, but also of county affairs.

Such are the reforms of the English Land System which recommend themselves to us as sound, equitable, safe, and practicable. They are not visionary ideals, but sober measures for which public opinion is well-nigh ripe; and when public opinion is fully ripe for them, one Session would amply suffice to pass them. It would be too much to expect them of the existing Parliament, burdened as it is with heavy arrears of English and Scotch business, long due, but constantly postponed to importunate Irish demands. But we may safely predict that, before many years have elapsed, the law of Primogeniture will have been abolished; that the power of Entail will have been largely restricted; that by these means, and by simpler methods of Land Transfer, land will come to be divided among a larger number of owners; that, by degrees, more landlords will farm their own land, and more farmers will own the land which they cultivate; that leases will more and more be substituted for yearly tenancy; and that labourers, no longer divorced from the soil, but enabled to rise by industry into the class of farmers, will regain the self-respect and providence which are the special virtues of a true peasantry.

In conclusion, let us endeavour to group together within the compass of a single view some of the effects likely to result from such a movement, and especially from the extension of what is now our territorial aristocracy.

"We may rest assured that no sudden or startling change would be wrought by so moderate a reform of the Land System in the characteristic features of English country life. There would still be a squire occupying the great house in most of our villages, and this squire would generally be the eldest son of the last squire, though he would sometimes be a younger son of superior merit or capacity, and sometimes a wealthy and enterprising purchaser from the manufacturing districts. Only here and there would a noble park be deserted or neglected for want of means to keep it up, and

want of resolution to part with it; but it is not impossible that deer might often be replaced by equally picturesque herds of cattle; that landscape gardening and ornamental building might be carried on with less contempt for expense; that hunting and shooting might be reduced within the limits which satisfied our sporting forefathers; that some country gentlemen would be compelled to contract their speculations on the turf, and that others would have less to spare for yachting or for amusement at Continental watering places. Indeed, it would not be surprising if greater simplicity of manners, and less exclusive notions of their own dignity, should come to prevail even among the higher landed gentry, leading to a revival of that free and kindly intercourse which made rural neighbourhoods what they were in the olden times. The peculiar agricultural system of England might remain, with its three-fold division of labour, between the landlord charged with the public duties attaching to property, the farmer contributing most of the capital and all the skill, and the labourer relieved by the assurance of continuous wages from all risks except that of illness. But the landlords would be a larger body, containing fewer grandees and more practical agriculturists, living at their country homes all the year round, and putting their savings into land instead of wasting them in the social competition of the metropolis. The majority of them would still be eldest sons, many of whom, however, would have learned to work hard till middle life for the support of their families; and besides these, there would be not a few younger sons who had retired to pass the evening of their days on little properties near the place of their birth, either left them by will or bought out of their own acquisitions. With these would be mingled other elements in far larger measure and greater variety than at present—wealthy capitalists eager to enter the ranks of the landed gentry; merchants, traders, and professional men, content with a country villa and a hundred freehold acres around it; yeomen-farmers who had purchased the fee simple of their holdings from embarrassed landlords; and even labourers who had worked their way upwards and seized favourable chances of

investing in land. Under such conditions, it is not too much to expect that some links, now missing, between rich and poor, gentle and simple, might be supplied in country districts; that "plain living and high thinking" might again find a home in some of our ancient manor-houses, once the abodes of landowners, but now tenanted by mere occupiers; that with less of dependence and subordination to a dominant will there would be more of true neighbourly feeling, and even of clanship; and that posterity, reaping the happy fruits of greater social equality, would marvel, and not without cause, how the main obstacle to greater social equality —the Law and Custom of Primogeniture—escaped revision for more than two centuries after the final abolition of feudal tenures."*

* "English Land and English Landlords," Part IV., chap. i

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